

NOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

HERBERT MARKMAN and POSITEK, INC.,

Petitioners,

—v.—

WESTVIEW INSTRUMENTS, INC. and
ALTHON ENTERPRISES, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**MOTION FOR LEAVE TO FILE OUT-OF-TIME
AMICUS CURIAE BRIEF OF THE AMERICAN
BOARD OF TRIAL ADVOCATES**

Robert G. Vial
Counsel of Record
Daphne A. Burns
Counsel for Amicus Curiae
American Board of Trial
Advocates
1717 Main Street, Suite 4400
Dallas, Texas 75201
(214) 712-4400

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No. 95-26

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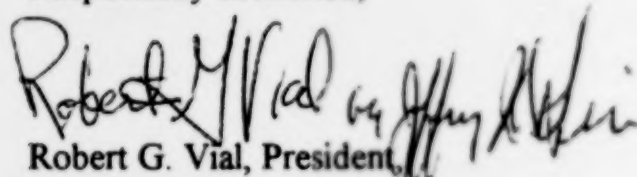
The American Board of Trial Advocates (ABOTA) respectfully moves for leave to file out-of-time its *Amicus Curiae* brief in this case.

No timely brief was filed because, as *Amicus Curiae*, ABOTA was unaware of this Court's order expediting this case. In accordance with Rule 29.2, ABOTA filed its brief by express mail with proof of service and bearing a postmark of November 9, 1995, the last day for filing in this case.

Although its *Amicus Curiae* brief was filed after the expiration of the time prescribed by this Court's order,

ABOTA respectfully requests that this Court exercise its discretion and power, in the interests of justice, to entertain its brief in these circumstances. *See United States v. Ohio Power Co.*, 353 U.S. 98 (1957).

Respectfully submitted,



Robert G. Vial, President,

Counsel of Record

Daphne A. Burns

Counsel for Amicus Curiae

American Board of Trial Advocates

1717 Main Street, Suite 4400

Dallas, Texas 75201

(214) 712-4400

November 22, 1995